

Adopted	Rejected
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COMMITTEE REPORT

YES:	10
NO:	0

MR. SPEAKER:

*Your Committee on Courts and Criminal Code, to which was referred Senate Bill 34, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Page 1, delete lines 1 through 17, begin a new paragraph and insert:
- 2 "SECTION 1. IC 34-30-2-149.4 IS ADDED TO THE INDIANA
- 3 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 4 [EFFECTIVE JULY 1, 2009]: **Sec. 149.4. IC 35-38-1-10.8(e)**
- 5 **(Concerning a mental health service provider who discloses**
- 6 **information in compliance with IC 35-38-1-10.8).**
- 7 SECTION 2. IC 35-38-1-10.5, AS AMENDED BY P.L.125-2007,
- 8 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 9 JULY 1, 2009]: Sec. 10.5. (a) The court:
- 10 (1) shall order that a person undergo a screening test for the
- 11 human immunodeficiency virus (HIV) if the person is:
- 12 (A) convicted of an offense relating to a criminal sexual act
- 13 and the offense created an epidemiologically demonstrated
- 14 risk of transmission of the human immunodeficiency virus
- 15 (HIV); or
- 16 (B) convicted of an offense relating to controlled substances

1 and the offense involved:

2 (i) the delivery by any person to another person; or

3 (ii) the use by any person on another person;

4 of a contaminated sharp (as defined in IC 16-41-16-2) or other

5 paraphernalia that creates an epidemiologically demonstrated

6 risk of transmission of HIV by involving percutaneous contact;

7 and

8 (2) may order that a person undergo a screening test for the

9 human immunodeficiency virus (HIV) if the court has made a

10 finding of probable cause after a hearing under section ~~10-7~~ **10.8**

11 of this chapter.

12 (b) If the screening test required by this section indicates the

13 presence of antibodies to HIV, the court shall order the person to

14 undergo a confirmatory test.

15 (c) If the confirmatory test confirms the presence of the HIV

16 antibodies, the court shall report the results to the state department of

17 health and require a probation officer to conduct a presentence

18 investigation to:

19 (1) obtain the medical record of the convicted person from the

20 state department of health under IC 16-41-8-1(a)(3); and

21 (2) determine whether the convicted person had received risk

22 counseling that included information on the behavior that

23 facilitates the transmission of HIV.

24 (d) A person who, in good faith:

25 (1) makes a report required to be made under this section; or

26 (2) testifies in a judicial proceeding on matters arising from the

27 report;

28 is immune from both civil and criminal liability due to the offering of

29 that report or testimony.

30 (e) The privileged communication between a husband and wife or

31 between a health care provider and the health care provider's patient is

32 not a ground for excluding information required under this section.

33 (f) A mental health service provider (as defined in IC 34-6-2-80)

34 who discloses information that must be disclosed to comply with this

35 section is immune from civil and criminal liability under Indiana

36 statutes that protect patient privacy and confidentiality.

37 SECTION 3. IC 35-38-1-10.6, AS AMENDED BY P.L.125-2007,

38 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

JULY 1, 2009]: Sec. 10.6. (a) The state department of health shall notify victims of an offense relating to a criminal sexual act or an offense relating to controlled substances if tests conducted under section 10.5 or ~~10.7~~ **10.8** of this chapter confirm that the person tested had antibodies for the human immunodeficiency virus (HIV).

(b) The state department of health shall provide counseling to persons notified under this section.

SECTION 4. IC 35-38-1-10.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 10.8. (a) The following definitions apply throughout this section:**

(1) **"Bodily fluid" means blood, human waste, or any other bodily fluid.**

(2) **"Dangerous disease" means any of the following:**

(A) Chancroid.

(B) Chlamydia.

(C) Gonorrhea.

(D) Hepatitis.

(E) Human immunodeficiency virus (HIV).

(F) Lymphogranuloma venereum.

(G) Syphilis.

(H) Tuberculosis.

(3) **"Offense involving the transmission of a bodily fluid" means any offense (including a delinquent act that would be a crime if committed by an adult) in which a bodily fluid is transmitted from the defendant to the victim in connection with the commission of the offense.**

(4) **"Potentially disease transmitting offense" means any of the following:**

(A) Battery by body waste (IC 35-42-2-6).

(B) Rape (IC 35-42-4-1).

(C) Criminal deviate conduct (IC 35-42-4-2).

(D) Child molesting involving intercourse or deviate sexual conduct (IC 35-42-4-3(a)).

(E) Child seduction (IC 35-42-4-7).

(F) Sexual misconduct with a minor (IC 35-42-4-9).

(G) Sexual misconduct by a service provider (IC 35-44-1-5).

1 **(H) Incest (IC 35-46-1-3).**

2 **The term includes an attempt to commit an offense referred**
3 **to in clauses (A) through (H) and a delinquent act that would**
4 **be a crime referred to in clauses (A) through (H) if committed**
5 **by an adult.**

6 **(b) This subsection applies only to a defendant who has been**
7 **charged with a potentially disease transmitting offense. The**
8 **prosecuting attorney may petition a court to order a defendant**
9 **charged with the commission of a potentially disease transmitting**
10 **offense to submit to a screening test to determine whether the**
11 **defendant is infected with a dangerous disease. In the petition, the**
12 **prosecuting attorney must set forth information demonstrating**
13 **that the defendant has committed a potentially disease transmitting**
14 **offense. The court shall set the matter for hearing not later than**
15 **forty-eight (48) hours after the prosecuting attorney files a petition**
16 **under this subsection. The alleged victim of the potentially disease**
17 **transmitting offense with which the defendant is charged is entitled**
18 **to attend the hearing. If, following the hearing, the court finds**
19 **probable cause to believe that the defendant has committed a**
20 **potentially disease transmitting offense, the court may order the**
21 **defendant to submit to a screening test for one (1) or more**
22 **dangerous diseases.**

23 **(c) This subsection applies only to a defendant who has been**
24 **charged with an offense involving the transmission of a bodily**
25 **fluid. The prosecuting attorney may petition a court to order a**
26 **defendant charged with the commission of an offense involving the**
27 **transmission of a bodily fluid to submit to a screening test to**
28 **determine whether the defendant is infected with a dangerous**
29 **disease. In the petition, the prosecuting attorney must set forth**
30 **information demonstrating that:**

31 **(1) the defendant has committed an offense; and**

32 **(2) a bodily fluid was transmitted from the defendant to the**
33 **victim in connection with the commission of the offense.**

34 **The court shall set the matter for hearing not later than forty-eight**
35 **(48) hours after the prosecuting attorney files a petition under this**
36 **subsection. The alleged victim of the offense involving the**
37 **transmission of a bodily fluid with which the defendant is charged**
38 **is entitled to attend the hearing. If, following the hearing, the court**

1 finds probable cause to believe that the defendant has committed
 2 an offense and that a bodily fluid was transmitted from the
 3 defendant to the alleged victim in connection with the commission
 4 of the offense, the court may order the defendant to submit to a
 5 screening test for one (1) or more dangerous diseases.

6 (d) The testimonial privileges applying to communication
 7 between a husband and wife and between a health care provider
 8 and the health care provider's patient are not sufficient grounds
 9 for not testifying or providing other information at a hearing
 10 conducted in accordance with this section.

11 (e) A mental health service provider (as defined in IC 34-6-2-80)
 12 who discloses information that must be disclosed to comply with
 13 this section is immune from civil and criminal liability under
 14 Indiana statutes that protect patient privacy and confidentiality.

15 (f) The results of a screening test conducted under this section
 16 shall be kept confidential if the defendant ordered to submit to the
 17 screening test under this section has not been convicted of the
 18 potentially disease transmitting offense or offense involving the
 19 transmission of a bodily fluid with which the defendant is charged.
 20 The results may not be made available to any person or public or
 21 private agency other than the following:

- 22 (1) The defendant and the defendant's counsel.
- 23 (2) The prosecuting attorney.
- 24 (3) The department of correction.
- 25 (4) The alleged victim and the alleged victim's counsel.

26 The results of a screening test conducted under this section may
 27 not be admitted against a defendant in a criminal proceeding.

28 (g) An alleged victim may disclose the results of a screening test
 29 to which a defendant is ordered to submit under this section to an
 30 individual or organization to protect the health and safety of or to
 31 seek compensation for:

- 32 (1) the alleged victim;
- 33 (2) the alleged victim's sexual partner; or
- 34 (3) the alleged victim's family.

35 (h) A person that knowingly or intentionally:

- 36 (1) receives notification or disclosure of the results of a
 37 screening test under this section; and
- 38 (2) discloses the results of the screening test in violation of this

1 **section;**
 2 **commits a Class B misdemeanor.**

3 SECTION 5. IC 35-44-3-2 IS AMENDED TO READ AS
 4 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. **(a)** A person not
 5 standing in the relation of parent, child, or spouse to another person
 6 who has committed a crime or is a fugitive from justice who, with
 7 intent to hinder the apprehension or punishment of the other person,
 8 harbors, conceals, or otherwise assists the person commits assisting a
 9 criminal, a Class A misdemeanor. However, the offense is:

10 (1) a Class D felony if the person assisted has committed a Class
 11 B, Class C, or Class D felony; and

12 (2) a Class C felony if the person assisted has committed murder
 13 or a Class A felony, or if the assistance was providing a deadly
 14 weapon.

15 **(b) It is not a defense to a prosecution under this section that the**
 16 **person assisted:**

17 **(1) has not been prosecuted for the offense;**

18 **(2) has not been convicted of the offense; or**

19 **(3) has been acquitted of the offense by reason of insanity.**

20 SECTION 6. IC 35-50-2-8, AS AMENDED BY P.L.71-2005,
 21 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 JULY 1, 2009]: Sec. 8. (a) Except as otherwise provided in this section,
 23 the state may seek to have a person sentenced as a habitual offender for
 24 any felony by alleging, on a page separate from the rest of the charging
 25 instrument, that the person has accumulated two (2) prior unrelated
 26 felony convictions.

27 (b) The state may not seek to have a person sentenced as a habitual
 28 offender for a felony offense under this section if:

29 (1) the offense is a misdemeanor that is enhanced to a felony in
 30 the same proceeding as the habitual offender proceeding solely
 31 because the person had a prior unrelated conviction;

32 (2) the offense is an offense under IC 9-30-10-16 or
 33 IC 9-30-10-17; or

34 (3) all of the following apply:

35 (A) The offense is an offense under IC 16-42-19 or
 36 IC 35-48-4.

37 (B) The offense is not listed in section 2(b)(4) of this chapter.

38 (C) The total number of unrelated convictions that the person

- 1 has for:
- 2 (i) dealing in or selling a legend drug under IC 16-42-19-27;
- 3 (ii) dealing in cocaine or a narcotic drug (IC 35-48-4-1);
- 4 **(iii) dealing in methamphetamine (IC 35-48-4-1.1);**
- 5 ~~(iii)~~ (iv) dealing in a schedule I, II, III controlled substance
- 6 (IC 35-48-4-2);
- 7 ~~(iv)~~ (v) dealing in a schedule IV controlled substance (IC
- 8 35-48-4-3); and
- 9 ~~(v)~~ (vi) dealing in a schedule V controlled substance (IC
- 10 35-48-4-4);
- 11 does not exceed one (1).
- 12 (c) A person has accumulated two (2) prior unrelated felony
- 13 convictions for purposes of this section only if:
- 14 (1) the second prior unrelated felony conviction was committed
- 15 after sentencing for the first prior unrelated felony conviction; and
- 16 (2) the offense for which the state seeks to have the person
- 17 sentenced as a habitual offender was committed after sentencing
- 18 for the second prior unrelated felony conviction.
- 19 (d) A conviction does not count for purposes of this section as a
- 20 prior unrelated felony conviction if:
- 21 (1) the conviction has been set aside;
- 22 (2) the conviction is one for which the person has been pardoned;
- 23 or
- 24 (3) all of the following apply:
- 25 (A) The offense is an offense under IC 16-42-19 or
- 26 IC 35-48-4.
- 27 (B) The offense is not listed in section 2(b)(4) of this chapter.
- 28 (C) The total number of unrelated convictions that the person
- 29 has for:
- 30 (i) dealing in or selling a legend drug under IC 16-42-19-27;
- 31 (ii) dealing in cocaine or a narcotic drug (IC 35-48-4-1);
- 32 **(ii) dealing in methamphetamine (IC 35-48-4-1.1);**
- 33 ~~(iii)~~ (iv) dealing in a schedule I, II, III controlled substance
- 34 (IC 35-48-4-2);
- 35 ~~(iv)~~ (v) dealing in a schedule IV controlled substance (IC
- 36 35-48-4-3); and
- 37 ~~(v)~~ (vi) dealing in a schedule V controlled substance (IC
- 38 35-48-4-4);

1 does not exceed one (1).

2 (e) The requirements in subsection (b) do not apply to a prior
3 unrelated felony conviction that is used to support a sentence as a
4 habitual offender. A prior unrelated felony conviction may be used
5 under this section to support a sentence as a habitual offender even if
6 the sentence for the prior unrelated offense was enhanced for any
7 reason, including an enhancement because the person had been
8 convicted of another offense. However, a prior unrelated felony
9 conviction under IC 9-30-10-16, IC 9-30-10-17, IC 9-12-3-1 (repealed),
10 or IC 9-12-3-2 (repealed) may not be used to support a sentence as a
11 habitual offender.

12 (f) If the person was convicted of the felony in a jury trial, the jury
13 shall reconvene for the sentencing hearing. If the trial was to the court
14 or the judgment was entered on a guilty plea, the court alone shall
15 conduct the sentencing hearing under IC 35-38-1-3.

16 (g) A person is a habitual offender if the jury (if the hearing is by
17 jury) or the court (if the hearing is to the court alone) finds that the
18 state has proved beyond a reasonable doubt that the person had
19 accumulated two (2) prior unrelated felony convictions.

20 (h) The court shall sentence a person found to be a habitual offender
21 to an additional fixed term that is not less than the advisory sentence
22 for the underlying offense nor more than three (3) times the advisory
23 sentence for the underlying offense. However, the additional sentence
24 may not exceed thirty (30) years."

25 Delete pages 2 through 6.

26 Page 7, delete lines 1 through 11, begin a new paragraph and insert:
27 "SECTION 7. IC 35-38-1-10.7 IS REPEALED [EFFECTIVE JULY
28 1, 2009]."

29 Page 7, line 12, before "IC 35-44-3-2," insert "**IC 35-38-1-10.8, as**
30 **added by this act, and**".

31 Page 7, line 13, delete "IC 35-44-3-4, and IC 35-47-4-5, all".

32 Page 7, after line 14, begin a new paragraph and insert:

33 "SECTION 9. [EFFECTIVE UPON PASSAGE] **(a) As used in this**
34 **SECTION, "commission" refers to the criminal code evaluation**
35 **commission established by subsection (b).**

36 **(b) The criminal code evaluation commission is established to**
37 **evaluate the criminal laws of Indiana. If, based on the**
38 **commission's evaluation, the commission determines that changes**

are necessary or appropriate, the commission shall make recommendations to the general assembly for the modification of the criminal laws.

(c) The commission may study other topics assigned by the legislative council or as directed by the commission chair.

(d) The commission may meet at times the commission determines are necessary during the months of:

(1) June, July, August, and September of 2009;

(2) April, May, June, July, August, and September of 2010;
and

(3) June, July, August, and September of 2011.

(e) The commission consists of fifteen (15) members appointed as follows:

(1) Four (4) members of the senate, not more than two (2) of whom may be affiliated with the same political party, to be appointed by the president pro tempore of the senate.

(2) Four (4) members of the house of representatives, not more than two (2) of whom may be affiliated with the same political party, to be appointed by the speaker of the house of representatives.

(3) The attorney general or the attorney general's designee.

(4) The executive director of the prosecuting attorneys council of Indiana or the executive director's designee.

(5) The executive director of the public defender council of Indiana or the executive director's designee.

(6) Two (2) judges who exercise criminal jurisdiction:

(A) one (1) of whom shall be appointed by the president pro tempore of the senate; and

(B) one (1) of whom shall be appointed by the speaker of the house of representatives.

(7) Two (2) professors employed by a law school in Indiana whose expertise includes criminal law:

(A) one (1) of whom shall be appointed by the president pro tempore of the senate; and

(B) one (1) of whom shall be appointed by the speaker of the house of representatives.

(f) The chairman of the legislative council shall appoint a legislative member of the commission to serve as chair of the

1 commission. Whenever there is a new chairman of the legislative
2 council, the new chairman may remove the chair of the commission
3 and appoint another chair.

4 (g) If a legislative member of the commission ceases to be a
5 member of the chamber from which the member was appointed,
6 the member also ceases to be a member of the commission.

7 (h) A legislative member of the commission may be removed at
8 any time by the appointing authority who appointed the legislative
9 member.

10 (i) If a vacancy exists on the commission, the appointing
11 authority who appointed the former member whose position is
12 vacant shall appoint an individual to fill the vacancy.

13 (j) The commission shall submit a final report of the results of
14 its study to the legislative council before November 1, 2011. The
15 report must be in an electronic format under IC 5-14-6.

16 (k) The Indiana criminal justice institute shall provide staff
17 support to the commission to prepare:

18 (1) minutes of each meeting; and

19 (2) the final report.

20 (l) The legislative services agency shall provide staff support to
21 the commission to:

22 (1) advise the commission on legal matters, criminal
23 procedures, and legal research; and

24 (2) draft potential legislation.

25 (m) Each member of the commission is entitled to receive the
26 same per diem, mileage, and travel allowances paid to individuals
27 who serve as legislative and lay members, respectively, of interim
28 study committees established by the legislative council.

29 (n) The affirmative votes of a majority of all the members who
30 serve on the commission are required for the commission to take
31 action on any measure, including the final report.

32 (o) Except as otherwise specifically provided by this SECTION,
33 the commission shall operate under the rules of the legislative
34 council. All funds necessary to carry out this SECTION shall be
35 paid from appropriations to the legislative council and the
36 legislative services agency.

37 (p) This SECTION expires December 31, 2011.

38 SECTION 10. An emergency is declared for this act."

- 1 Renumber all SECTIONS consecutively.
 (Reference is to SB 34 as printed February 6, 2009.)

and when so amended that said bill do pass.

Representative Pierce